

August 24, 2020

The Honorable Judge Bianco
U.S. District Court – EDNY
100 Federal Plaza
Central Islip, NY 11722

Re: Recent witness impact statements (Burdick)

Your Honor,

Robert Burdick's third party ancillary proceeding to the Court raises numerous issues the Court should weigh relative to the government's prosecutorial theme that Kenner 'used Jowdy' to blame stolen funds on—alleging it was actually Kenner who stole the funds (*Tr.27-33*). Burdick is a victim of Ken Jowdy as well—simply on a different scale; *before* and *after* Burdick was fired in August-September 2008 for *telling the truth about Jowdy to the investors* (*Ex. G at 7: 3500-RB-1-r*).

- Kenner requested his trial counsel (i) interview and (ii) prepare Burdick as a defense trial witness. Trial counsel refused to even speak with Burdick.

Anyone interested in real justice?...

Kenner is available—if genuine justice has a sincere interest. Kenner is accessible to any 'un-compromised' DOJ official who wants to finally expose the two decades of Jowdy-related criminal behavior and those involved (*hi-lighted: see Kaiser's February 2019 letter to the Court: (Ex. K: ECF No. 628)*—*shocking the conscience of obvious FBI ignored graft which included Kaiser as a 5-year insider making confessions to this Court in 2015¹*). Kenner has all of the accounting traced and

¹ Based in a lack of character and personal compromise—Kaiser *did not* expose the well-known Jowdy graft in his February 2019 submission until *after* he was no longer employed by Jowdy—assisting in the plan to 'eliminate' Kenner as a problem for Jowdy and his criminality at all costs—and preserving his own job with Jowdy at the time of his 2015 testimony (with his master's desires). The Court can see what happened after Kaiser's "*winning and dining*" by Jowdy no longer had value for Jowdy to keep him around (*Ex. K at 4: ECF No. 628*). **He was fired!**

- The Court should note that with Kaiser and Berard working hand-in-hand versus Jowdy—before their 2011 employment began—Berard sent Kenner and others serious anti-Jowdy texts—with full knowledge of the Jowdy criminal activity (*ECF No. 736 at 80*) (5-1-2010):

[Kenner]: *Great job with the reporter. Who was it?*

[Berard]: *The douchebag from the Daily News. Told him he's an idiot for printing these articles and he can quote me that I've been to both properties over a dozen times and Jowdy has not done his job.*

...And the August 5, 2020 dated Kenner submission re: Nolan (*at 39*)—(10-7-2010):

corroborated for anyone with the *fortitude* to expose those who have protected Jowdy and his co-conspirators since Kenner exposed them in 2006-07 (immediately upon discovery of Jowdy's criminality). Unrelated DOJ government officials have expressed their fear of those protecting Jowdy—because of *who* is actually behind it. It was explained to Kenner in June 2018:

“I did talk to my [U.S. Attorney] cousin and he said that people like Jowdy have a lot of power and money to control people. He’s [Jowdy’s] been doing this for years. He also talked to a few FBI AGENTS and said we do need to be careful because they can fuck up a persons life. Just like they did to Phil. Very dangerous people too. He will look into it more and get back to me.”²

Typical Jowdy bribes—then threats...

Ironically—days after Kenner **refused Jowdy's May 2007 in-person bribes** of FBI protection and promises of endless development money from Masood Bhatti (Lehman Brothers' lender), attorney William Najam emailed Jowdy on May 8, 2007, warning him: *“The last thing you need is a conflict situation with another partner [like Kenner]”* (Ex. A at 18-19) (Ex. J). **Noting:** Najam was named as a Jowdy co-conspirator in the original 2009 EDNY criminal investigation—to which Kenner, Hughes, Burdick, and others with firsthand knowledge of Jowdy's criminal activity proffered with the FBI, SEC, and U.S. Attorneys offices—*before the investigation mysteriously disappeared—despite the verification of the same crimes the government described to the Court in their July 3, 2020 submission—11 years later.*

FBI interviews of Jowdy employees...

During Burdick's interview—he *verified thru testimony* that Kenner wanted **everyone** to speak *openly and freely* with the FBI—unlike the ruse AUSA Michiewicz offered the trial Court—claiming Kenner *“berated”* Kaiser for speaking with the FBI as a sign of Kenner's *“consciousness of guilt”* (Tr.1032-33). The *contemporaneous* text messages between the involved parties prove this was another fabrication to

[Berard]: *Uve put up wth enough bullshit over the years. Try to get them there \$ back and wash ur hands wth all these retards. Hopefully can go after Leaman Borthers soon too.* [Continue 11-9-2010: Berard]: *Basically we shld throw the who kitchen sink at Tommy and also get on the feds and let's get movn on Leaman and jowdy?*

[Kenner]: *Please do...Yes & yes & yes!*

- Then—months later after full Kenner transparency and demanding Fed intervention with Berard—the *“winning and dining”* started on Kaiser and Berard by Jowdy and Harvey—**successfully**—and they cut their deal with the devil...

² Source available **under seal** to the Court for obvious fear of retaliation to more anti-Jowdy cabal individuals.

prejudice Kenner to the Court (*ECF No. 736 at 77-79*). In short, dated 10/20/2010—the day after Kaiser's FBI proffer:

[Berard]: *U hear abt Johnys visit yesterday??*

[Kenner]: *Yep. I think its great*

[Berard]: *Me too. He was rattled. But I'm glad they...They went and saw him face to face. I wish they wld call me or come see me too*

[Kenner]: *Soon enough as well. They seemed very uninformed according to johnny!*

...

[Kenner]: *I just think they need the WHOLE story since they've only really spoken with myrick, Moreau, Nolan, Jowdy, etc. Mexico is good!*

[Berard]: *Great. I agree. Once they talk to us. I think it will switch over*

- Neither Galioto—nor the AUSA's office—ever spoke to Kenner about the Jowdy issues again after cancelling Kenner's August 2009 EDNY Grand Jury appearance—without explanation.
- Mind-bogglingly (especially as a Northern Trust LOC investor)—Galioto documented his first communication with Berard—4-years later—only *after* Jowdy employed him (*3500-BB-1-r: dated 9/19/2013*).

Yet—in real time contradiction to any “*consciousness of guilt*”—Robert Burdick *verified thru testimony* to the FBI (*documented in Galioto's raw notes: Ex. G at 12*):

“RB – last time spoke to PK – a week ago – did tell PK that Feds called him – PK said talk to them – no problem”

Burdick is another Jowdy victim...

Jowdy confessed to the FBI, his endless “guarantees” to everyone. Jowdy's decade-long mantra was—“*if everything fell through w/ CSL then have to sell El Rosario [DDM].*” (*Ex. G at 20*). Yet—when Jowdy signed the Cabo deal in March 2006—he had already fully leveraged a \$68.9 million [*KPMG: Ex. D at 3*] appraised property for a *useless* \$3 million loan. Jowdy made the “guarantee” collateral worthless—simply so he, Najam, and other family members could continue their desperate Ponzi scheme—even though his 2004 Hawaii loan agreement guaranteed the DDM property as collateral, *infra—verified thru testimony* by John Kaiser (while the Hawaii partners Managing Member).

Burdick (“RB”) was a victim of the same Jowdy false ‘guarantees’ that defrauded Kenner, Kaiser, and the investors as well (*Ex. G at 6: “KJ told RB would have % in Rosario [DDM] property – if cant get investors – will sell property + make a lot of \$.”*). Jowdy's *unencumbered* DDM project equity was one of the key collateral

“guarantees” by Jowdy for the 2004-Hawaii loans (*Ex. F at 24-25, ¶¶1, 3, 6*). After multiple independent meetings with Jowdy face-to-face—Hawaii management team member John Kaiser—*verified thru testimony* the same collateral during his voluntary 2009 arbitration testimony [*Day 5 at 924-25*]:

Q. And what was your understanding of how it was supposed to get paid back?
A [Kaiser]: Well, the first -- my first concern was to make sure that he had some collateral so it could get paid back, which he did. It was a parcel in Mexico, on North Baja, and that was his collateral. I think he had 70 percent interest, and I think the property was appraised maybe at 30-, 35 million.

Q. Was Mr. Jowdy at that time someone that appeared credible to you?
A [Kaiser]: Yes.

Q. Why is that?
A [Kaiser]: Well, the first thing, Mr. Kenner told me he was, and I met him [Jowdy] a couple of times. He seemed -- a big thing it was 15 percent interest rate, and I thought it was a good move.³

³ Kaiser's face-to-face meetings with Jowdy *before* the 2004 Hawaii loan agreement was signed was documented by FBI agent Galioto's *raw notes*—**5 times** (*Ex. M at 2, 3, 10*).

Noting: Kaiser denied ever telling the FBI any of those details during his 2015 trial testimony (*Tr.1120-21*). ***FBI agent Galioto sat silent during the obvious perjury by his star-witness:***

Q. Mr. Kaiser, isn't it true that when you were interviewed by Special Agent Scott Romanowski and Special Agent Matt Galioto of the FBI on October 19, 2010, at 11:00 a.m., you told the agents that you met Jowdy twice in New York City and at the second meeting at a bar in New York City you discussed with him Hawaii and the lending of money from Hawaii to Mexico, isn't that true?

A. [Kaiser]: No.

Q. You did not tell the FBI agents what I just related?
A. [Kaiser]: That's correct.

Q. Isn't it true, Mr. Kaiser, during an interview with the FBI on October 19, 2010, 11:00 a.m. specifically Scott Romanowski and Matt Galioto, that you told them that you saw Kenner Jowdy in Mexico a couple of times and discussed that Kenner Jowdy wanted to borrow money from Hawaii to Mexico and would pay it back after the closing?

A. [Kaiser]: No.

Q. Isn't it true, sir, on October 19 at 11:00 a.m. in an interview conducted by Scott Romanowski and Matt Galioto of the Federal Bureau of Investigation you told them that Kenner Jowdy brought up money -- Kenner Jowdy brought up borrowing money from the Hawaii Project, borrowed millions, 5 to 6 million from Hawaii Project, that it was first going to be hundred thousands not millions and that Kenner Jowdy was not happy that the money amount started to grow to millions after money to Mexico?

Burdick was fired by Jowdy's cabal in 2008 for assisting Kenner and the investors expose Jowdy's *first* decade of unchecked and FBI-personnel protectionism (*Ex. G at 8*: “Cabo – KJ – only came down when = [Louis] Freeh – came down 4x’s → Diamante paid for trips = b/c hired ex-F.B.I. agent – John Benke → LF [Louis Freeh] guys”).

Even ex-FBI agent John Behnke (“JB”) was uncomfortable with Jowdy's criminal dealings pre-2008—until Freeh gave his blessings (Behnke’s direct former boss—and best friend). Burdick explained to FBI agent Galimoto in February 2010 (*Id. at 10*): “Tommy Constantine – 2007 – John Behnke - told RB – let TC [Constantine] settle + sell property...JB [said] we’re screwed if TC doesn’t get this done”—and finished with the real time disappointment of Behnke and him: “TC got frustrated w/ KJ – not letting it get done”.⁴ And—then hi-lighted the well-known discovery of Bhatti-Lehman Brothers complicity (*Id. at 3*: “then started going down to Cabo...things started getting ‘sticky’...\$ started not getting paid”...KJ secretive on when he came down or people coming down – non-investors⁵...KJ never told RB [Burdick] that PK was his partner”—and at 6: “KJ stopped communications...PK – communicating w/ RB – loaned \$ to RB to pay expenses). Burdick explained many of Jowdy's ‘suspicious’ dealings to the FBI in 2010 (*Id. at 13*: “Masood [Bhatti] – involved → RB had bad feelings about him since Cabo + El Rosario [DDM] = deals under the table”)—all of which—and more—are now exposed by the AUSA Forfeiture team in their July 3, 2020 submission. This *new revelation* was after 10 more years of criminal decadence by all things Jowdy-related; and known to FBI agent Galimoto since 2009. Kaiser had previously *verified* Bhatti as another Jowdy-co-conspirator during his

A. [Kaiser]: No.

⁴ Even years later—in 2012—after 5 years of Mexico litigation and other physical assaults in Mexico—a 3rd party brokered a \$20 million deal for Kenner and Kenner investors to sell the Baja Ventures 2006 and CSL Property LLCs equity to a Jowdy-friendly party. Jowdy terminated that deal—because he, Bhatti (*Ex. K: ECF No. 628 at 2*), and Danske (*Id. at 3*) could not allow an ‘uncontrolled’ party to review the DCSL books and records...for fear of exposing their decade of joint-corruption (in Rule 16 evidence).

⁵ The “non-investors” were identified around town as armed-Mexican cartel members who were using Jowdy's airstrip in Northern Baja at the DDM site; also identified by former Cabo employee, Hawkins, to the Court (*ECF No. 730: Hawkins sentencing letter, “Ken [Jowdy] started having drug cartel people and people with guns around him whenever he was there. He had lots of security people for himself. Stuff was not right. I told John [Kaiser] and Pk. There were a lot of rumors in that small town that he was letting the cartel people use his runway on the other property to transport drugs with his Mexico attorney [Fernando Garcia]”; Ex. N at 2*).

February 2019 submission (*Ex. K at 2: "Jowdy didn't tell the Court that Silverpeak is a company run by his close friend Masood Bhatti, or that Jowdy was paying Diamante funds to Silverpeak \$150,000 to \$200,000 every month to find 'investors' or 'loans' for Diamante."*—And other 'secret' deals at 2-3, annotated).

Noting: The consulting payments are exactly what Kenner was charged as a criminal act—despite the Little Isle 4 By Laws *authorization* (*Ex. Q at 2*)—and the 3rd-party consulting deal negotiation by Hawaii COO Manfredi—not Kenner—in 2004 (*Tr.3004*)—before Kaiser (Manfredi's best friend at the time) signed the first of three Constantine agreements. Hawaii COO Manfredi *verified thru testimony* his knowledge of the consulting agreements to the FBI in 2010 (*Ex. R at 1*)—**5 years prior to trial**. Manfredi's-own verification was typically 'forgotten'—to support another concealment angle—during Manfredi's 2015 incredible testimony of total amnesia related to 'anything Constantine' (*Tr.3005-16*); including (*Tr.3016: "I honestly do not recall communicating directly with Tommy Constantine."*) after reviewing a multitude of *his own* direct emails with Constantine about the consulting work and working to find a lender—**together**. John Kaiser also identified Constantine's consulting role to FBI agent Galioto in October 2010 (*Ex. M at 5: along with two other consultants identified by Kaiser*)—leaving one to 'scratch their head' as to why no one could remember 'anything' 5-years later?

- Post-termination—the FBI *raw notes* identified that Burdick was another person forced to sue Jowdy in Mexico (*Ex. G at 9: "RB – has = claim against CSL [Diamante Cabo san Lucas]"*)

More documented threats of physical violence for adverse-Jowdy parties...

The physical threats of violence for any Jowdy-adverse party began immediately after Jowdy and his attorney, Tom Harvey, terminated the macro-settlement talks in 2008. At that point—Burdick's former Diamante co-employee—Robert Gaudet—communicated his concerns of guns and threats of violence to the investors' Mexico attorney, Barreras (*Ex. O—January 29, 2009 [Gaudet]: "I mentioned Jowdy group has threatened us in the past...once [legal] possession [of Diamante] is given to us does the federal ruling come with federal protection? We believe Jowdy or Garcia [Jowdy's Mexico attorney] have staff that carry firearms!!!"*—And *Ex. P—January 27, 2009 [Gaudet]: "Because we have already been threatened by the other side re access to the property etc.. what further protection can we request or alert the federal authorities."*).

In February 2010—Burdick had *voluntarily* re-confirmed what Kenner, Jowdy's executive assistant Hughes (*Ex. H—3500-SH-1: with FBI agent Galioto taking notes*), and others *discovered* about Jowdy—**and told the FBI in 2009**. Five (5) days after

Kenner's June 2009 proffer—Jowdy's executive assistant, Hughes, told the FBI and U.S. Attorneys office:

[Hughes]: *"Jowdy was 'living the life' on other people's money"*—and

[Hughes]: *"When investors asked for an update on the project, Jowdy would always brush it off and say he would get around to it."* —and

[Hughes]: *"Money raised was being spent on entertaining, not development."* —and

[Hughes]: *"Hughes would hear the baseball players talking about going on a free trip to Cabo"*—and

[Hughes]: *"Hughes saw lavish spending during her time as Jowdy's employee"*—and

[Hughes]: *"Jowdy would use planes from Diamante Air to fly people during breaks in the baseball season. The plane was usually 'filled with girls'"* —and

[Hughes]: *"He [Jowdy] tricked a lot of people."* —and

[Hughes]: *"The money raised was supposed to go for the development of the del Mar property [North Baja: DDM], but most of the money was spent on entertaining at the Cabo san Lucas property."* —and

[Hughes]: *"[Ken] Ayers was the head project manager, but Hughes did not know what he did. She did not see him much."*

Ken Ayers—Jowdy's right-hand-man—was in charge of Jowdy's monthly budget submissions to Lehman Brothers (March 2006-September 2008) while they were embezzling hundreds of thousands per month—*plus salaries*—until the Lehman Brothers bankruptcy in September 2008 (*Ex. A at 13-15*).

- Ayers eventually quit—despite his Diamante \$408,000 per year salary—and over a half-million per year *more*, each from two other Jowdy-Bhatti funded projects⁶—and 'do nothing' job(s). Ayers quit due to the criminal pressures of

⁶ Jowdy and Lehman Brothers banker, Masood Bhatti, funded two (2) projects in 2007 (in Tennessee and Texas). Both were racketeering money grabs from the budgets—with Bhatti approving every monthly withdrawal (in Rule 16 discovery). Jowdy and Bhatti were 'washing' funds between the three (3) projects in 2007 and 2008 *before* embezzling it—typically with the use of Jowdy-Bhatti's new Legacy Property LLC for further money tracing

being involved with Jowdy and refusing to continue with Jowdy's scheme after Danske joined Jowdy's scheme in 2009 (*Ex. W: noting the false financial representation at 2*).

- Also—Jowdy's Cabo golf-construction-manager, Dave Boyden—verified thru testimony to FBI agent Galioto that Ayers was never around Cabo during his three years at the site (3500-DBP-1-r: notes by Galioto): “*Although AYERS was listed as the Project Manager, he very rarely was at the property. In three years, Boyden saw AYERS about ten times at the property. Each time he saw AYERS it was only for a few hours.*” Galioto further noted from the 2010 Boyden interview, “*Jowdy and Kenner started to not get along after Jowdy closed with Lehman Brothers on the DCSL property. Jowdy started to focus on other projects [with Bhatti] in Boot Ranch, Texas and Palms Springs, CA [and also Laurel Cove, Tennessee].*”
- Michael Peca verified thru testimony the same Jowdy issues to the SDNY Grand Jury [*Michael Peca 2011 SDNY Grand Jury testimony at 30-31*]: “*Here’s where a lot of the cross starts to happen. A short-term loan to Mr. Jowdy, because at the time Cabo – we hadn’t gotten the lending from Lehman Brothers yet. We made a short-term loan until the lending came in. Once the lending came through they were to pay back the loan, I think in the neighborhood of five-and-a-half million dollars, on the closing. It was never paid back. And then communication basically seized at that point from him [Jowdy]. That was kind of the whole sticking point as far as me and the other guys with Mr. Jowdy.*”
- Astoundingly—after Hughes’ and Kenner's June 2009 representations of Ayers co-conspiratorial, do-nothing role with Jowdy (and re-verification in February 2010 by Burdick and Boyden)—the FBI never interviewed Ken Ayers.
- Alternatively after the Kenner and Hughes June 2009 interviews— Galioto’s immediate reaction once communicating with Jowdy's attorneys—was to *cancel* the follow-up interviews with Hawaii-Mexico investors: **Norstrom, Peca, Sydor, Murray, Gonchar, Berard**, Stevenson, and McKee (*Ex. S*)—and begin sending subpoenas to Kenner credit facilities (specifically directed by Jowdy and Harvey). *The initial FBI interviews Kenner arranged represented six (6) of the seven (absent Nolan) Hawaii LOC “investments”: **BOLDED**, supra*. Only 3 months

difficulties. The banking records are in Rule 16 production in the *United States v. Kenner* case. Kenner has presented these to the Court in previous filings—thus the government has not only seen them (a second time after their initial subpoena) but has *deliberately ignored* the tens of millions of dollars of criminal activity...perhaps—again for a favor to ‘those involved’. In 2007—Jowdy and Bhatti funded Jowdy's Tennessee project equity with **embezzled** DCSL deposit money from investors (not even their typically concealed budget thefts)—as a minute subset of their racketeering and money laundering activities (*Ex. I*).

after the April 2009 Northern Trust collateral seizures—***the FBI had their perfect chance to find out of any of the investors were ‘confused’—in real time.*** But—Galioto *cancelled* them; *not Kenner*.

- Clearly—Kenner had **zero** concerns for their direct testimony to the FBI—hi-lighting Kenner's never-ending documented *transparency*.

Robert Burdick also proffered to the FBI about Ayers' do-nothing scheme with—and for Jowdy (*Ex. G at 7: “KA [Ken Ayers] – never around; never answered phone – came down few times = few hours”*). **Noting:** Ayers was the top management person in charge of Diamante Cabo san Lucas' daily development under Jowdy and Bhatti (Lehman Brothers) from March 2006 thru September 2008.

With Galioto's full knowledge of the Jowdy thefts—he orchestrated the cover-up... The government's own forfeiture submissions of *government-forfeiture-36* and *government-forfeiture-44* *debunked* the prejudice of who actually stole the money—but only post trial. Despite its 2016 *self-debunking*—the government misrepresented to the Court during their 2019 sentencing memo that Kenner *still* stole the funds to buy his Mexico equity: “*Kenner used approximately \$2.4 million to buy a personal stake in property in Mexico.*” (*ECF No. 765 at 8*).⁷ **It is still false!”**

Jowdy's new co-conspirator...

The government has moved their goalposts again—5-years after trial to now allege Jowdy is a co-conspirator with the Danske Bank lenders. This 2020 government revelation is 11-years after Kenner detailed Jowdy's macro-criminality to FBI agent Galioto in June 2009—corroborated by the Hughes, Boyden, and Burdick FBI proffers. Kenner verified thru submissions to this Court the Jowdy embezzlements

⁷ If this nonsense had any validity, then Kenner and his Baja Ventures 2006 partners would have a \$6.5 million (or more) capital account in the Cabo san Lucas project. Jowdy documented \$2.5 million. This was well known once discovered—post Cabo closing. *Government-forfeiture-36* (their own money-tracing submission) also proves it—*notwithstanding* Kenner's \$1 million or so in expense contributions, purposely unaccounted for by Jowdy once Kenner exposed him (*Ex. B: hi-lighting another \$375,000 in Mexico expenses Kenner contributed—left unaccounted by Jowdy's fraud*). The government exculpatory evidence confirmed that Jowdy stole \$1.6 million of those funds from the Stumpel deposit of 5-23-2005 to Jowdy's LOR Management account (*government-forfeiture-36*)—and was sued for it in Mexico in 2008 (*Ex. C*). The government does nothing about it. Stumpel's Mexico litigation versus Jowdy was terminated in 2012 after John Kaiser gave his umpteenth fabricated “forgery” testimony (*ECF No. 112-9 at 1-4*). It was *debunked* as *another forgery fraud by Kaiser* on one of many 2012 FBI recording by Kaiser-Jowdy co-conspirator, Bryan Berard—also known to the FBI and U.S. attorneys office while presenting the ruse on the Court.

and racketeering with the previous Lehman Brothers-Jowdy complicity (*Ex. A at 10-20* [DCSL embezzlements]—and *at 20-27* [DDM embezzlements]: *ECF No. 667*).

Burdick's Diamante del Mar "safety net" (as John Kaiser voluntarily verified in 2009)... As Jowdy's first Mexico employee—Burdick moved to and lived in Mexico. Burdick worked as Jowdy's *go to man* for many of his early develop needs on site. For Burdick's sacrifices—like Anthony Miranda and others—Jowdy promised (albeit hollow as now discovered)—that because the DDM project was owned '*for cash*' (*with an April 1, 2005—\$68.9 million KPMG appraisal: Ex. D*)—the property would be the "*safety net*" for Burdick and the rest of the investors to get paid back in the future as their ultimate "guarantee"—like the Hawaii loan guarantee. Jowdy highlighted this "guarantee" specifically when re-focusing the development efforts in 2005 to Cabo san Lucas and another development opportunity (eventually DCSL) (*Ex. G at 6*). Jowdy never told Burdick, Kenner, or the investors that he and Najam had secretly secured a \$3 million loan against the DDM property—violating the 2004 Hawaii lending agreement. As such—Jowdy and Najam looted the loan over the following 6 weeks (February 21, 2006 thru April 2006) (*Ex. A at 21-22*); further harming the Mexico DDM inventors and the Hawaii loan guarantee.

Noting: Based on Tom Harvey's fraudulent "*lien*" promise to Kenner and Kenner investors starting in 2002 (*Ex. L at 4: Owen Nolan example*)—the FBI knows that the DDM project was *never* transferred into a single entity (in Mexico or the USA) that was co-owned by a single Kenner-related investor—again *shocking the conscience* while overlooked by the FBI (*Id. at 2: "Desarrolladora S. de R.L de C.V. and Inmobiliarria S. de R.L de C.V.... and LOR Management S.A. de C.V."* were owned at all times by Jowdy and his Mexico attorney Fernando Garcia). Jowdy *verified thru testimony* the LOR Management ownership on January 5, 2010 during his 2-day California deposition [*at 92*]: "*Q. And LOR Management -- who's the owner of LOR Management? A [Jowdy]: I believe that 99 percent is me and 1 percent is Fernando Garcia.*" The other two Mexico entities were unknown by Kenner and Kenner investors until the Rule 16 government production in 2014—owned exclusively by Jowdy and Garcia.

- Jowdy *never* relinquished the DDM property ownership—years after \$10 million-plus had already been transferred to his control by the investors—and millions more were used by Jowdy as part of the Hawaii loans. The 'secret' loan in February 2006—also violated the 2004 Jowdy-Hawaii loan agreement language of mandatory repayments (*Ex. F at 24-25, ¶1, 3, 6*).
- To further corroborate Jowdy's criminal activities—he had all of his DDM investors sign "*subscription agreements*" for Baja Management and Diamante del Mar—*two* (2) *companies that never owned anything!* (*Id. at 10: "KJ - Baja*

Management – each investor signed offerings + subscription agreement” — including Kenner as a Jowdy victim). Attorneys William Najam and Larry Markowitz prepared Jowdy's offering documents—and were complicit in Jowdy's two decades of criminality.

Stunningly—during Jowdy's *voluntary* 2009 arbitration testimony (on behalf of Nolan to seed more lies and deception for the Kenner investors)—he testified that there was “*no loan*” on the DDM property, *infra*. Jowdy's May 27, 2009 arbitration testimony was as follows [*Day 2 at 348-349*]*—3 years after* he and Najam signed for and looted the February 21, 2006 loan:

ARBITRATOR CAMPBELL: On the Northern Baja project, that's the one with the airstrip and the water well. Is there anything else there?

THE WITNESS [Jowdy]: No. There's some houses that people have lived there that we bought out. Maybe three residences of different –

ARBITRATOR CAMPBELL: And that project is sort of dead in the water right now?

THE WITNESS [Jowdy]: I would like to just say it's idle.

ARBITRATOR CAMPBELL: There's no loan on it. There's no development loan on it?

THE WITNESS [Jowdy]: No.

Jowdy needed to lie in May 2009—because neither Kenner nor the other DDM investors (*including Nolan* whom he and Najam were testifying for) knew **yet** (3 years later) that Jowdy had fully encumbered the DDM property—and looted the KSI loan funds within two (2) months of the unnecessary February 21, 2006 loan (*Ex. A at 22-23*). The February 2006 KSI-loan was only one (1) month prior to Jowdy signing the \$125 million Cabo loan with Lehman Brothers (March 2006). Without remorse—Jowdy then began to loot the DCSL budget funds (with Bhatti's complicity) immediately after his KSI thefts emptied the “DDM cookie jar” (*Ex. A at 13-15*) for the last time (*Ex. L: exposing attorney Tom Harvey's co-conspirator role since his “fake lien” guarantees to Nolan and the early DDM investors at 4*).⁸ Jowdy

⁸ The Jowdy-Harvey loan-crimes are identical to the criminal acts in *United States v. Turk*, 626 F.3d 743 (2d Cir 2010). Harvey was Louis Freeh's co-counsel with Jowdy (including

signed foreclosure papers with KSI (the \$3 million looted loan) on the DDM project property in or about 2011—after years of forbearance—triggering a \$10 million dollar plus equity investment loss to Kenner and his investors—*not based on development incompetence*—but based on pure criminal actions...known and unchecked by the same FBI agent that Burdick, Kenner, and the investors began counting on in 2009 for help.

Jowdy, Harvey, and Najam had already drained the DDM investment funds by 2006... In addition—what Burdick, Kenner, and the investors did not know was that the 3 of them had drained approximately \$7 million of the first \$10 million investment dollars from the original Diamante (North Baja: DDM) project thru sheer embezzlements from day 1—August 2002 (*Ex. F*).

Noting: The government was deftly aware of Jowdy's initial embezzlements thru Kenner's June 2009 proffer—AND—re-confirmed their implicit knowledge of the same *the week before the 2015 trial* (*Ex. E: April 20, 2015*). Regardless of the government's self-verified truths about Jowdy's immediate thefts with Najam, his father (Taffy Sr.), and others from *everything* Diamante (DDM and Cabo)—the government ignored their own bank subpoena on the *eve of trial* that confirmed Jowdy stole *at least* \$417,000 of the first \$804,000 DDM deposits in August 2002 from investors Kenner, Woolley, and Khristich (*Ex. A at 25-27: ECF No. 667*)—the balance of the \$804,000 is untraceable without further subpoenas. Alternatively—the government insinuated that Jowdy was an “*innocent*” person during their

attorney Joel Friedman from Freeh's office) in the original EDNY Jowdy-Najam investigation quashing [*Jowdy January 5, 2010 California deposition at 26-27*]:

Q. And are you the subject of any investigations?

A [Jowdy]: I believe so, yes.

Q. And tell me what your understanding is.

A [Jowdy]: That I received a subpoena from -- a grand jury subpoena for our books and records. And cooperated and complied as much as I've been asked to, I believe.

Q. And what is your understanding of how you cooperated?

A [Jowdy]: By giving them whatever they've asked for.

Q. Did you direct the person that sent you the subpoena to Danbury, Connecticut, to look at the books and records, or did you make copies for them?

A [Jowdy]: I haven't had any contact with them myself.

Q. Who's been dealing with them?

A [Jowdy]: My attorney.

Q. And who is that?

A [Jowdy]: Louis Freeh and Tom Harvey and Joel Friedman.

opening remarks (*Tr.31: "This is the fraud where the defendants lie to the investors about who's stealing from them..."*). This government's *eve of trial* subpoena corroborated Kenner's 2009-proffer to FBI agent Galimoto of *instant* Jowdy embezzlements since August 2002. Jowdy's criminal activity was obviously premeditated before his first solicitation of funds in 2002—and the government had their proof pretrial (*Ex. E: subpoenaed April 20, 2015*).⁹

Further ignored to frame their case—Jowdy's own embezzlement confessions to FBI agent Galimoto...

Ironically—with former FBI Director Louis Freeh at Jowdy's side during his March 2010 FBI proffer, *Jowdy confessed* to his initial embezzlements (*Ex. F*)—and the FBI agents' *raw notes* documented (amongst others):

[Jowdy]: "*All of the funds were not used for DDM*" (*Id. at 3*)—and

[Jowdy]: "*If I wasn't allowed to use \$ then it was a problem*" (*Id. at 11*)—and

[Jowdy]: "*personal – rent + car - \$ used from BD Corp acct – not part of DDM*" (*Id. at 11*)—and

[Jowdy]: "*Thought I could use \$*" (*Id. at 12*)—and

[Jowdy]: "*02-06 – \$ used from BD [Baja Development Corp] to pay personal exp.*" (*Id. at 12*);

The agent's *raw notes* continued by describing the Jowdy confession that he diverted \$110,000 of investor money for his own capital account: "*b/c PPM said that KJ [Jowdy] needed to contribute \$*" with "*source of \$110k from BD Corporate – from initial investors \$*" (*Id. at 3*).

2002—and documented—money-laundering efforts by Jowdy and complicit with Najam to defraud Kenner and Kenner investors...

Shocking the conscience—*again*—is the government possession of the Najam money-laundering letter (*Ex. V*) to Hudson United Bank to explain how he and Jowdy were laundering Jowdy's initial \$100,000 'contribution' to the DDM LLC—necessary because the DDM operating agreement and subscription agreements (they created) documented Jowdy's personal equity funding. After the bank

⁹ During Burdick's FBI proffer in February 2010—Burdick confirmed that Jowdy had already robbed NBA superstar and broadcaster, Jon Barry (*Ex. G at 11*). Barry's investment amount was later confirmed as \$250,000 for an unrelated Jowdy real estate project in Georgia (Startime). Some of Barry's stolen funds were traced to Roger Clemens thru Jowdy disbursements.

followed Najam's written-money laundering instructions to transfer \$100,000—stolen from the investors deposits from Baja Development Corp's account (*Jowdy's personal account at First Union Bank: Ex. V at ¶1*)—Najam instructed Hudson United banker, Van Sickle, to use Jowdy's personal check to *wash* the funds the first (1st) time thru DDM's sub-company, Baja Management LLC (*Ex. U—“MEMO: Balance of investment; Diamante del Mar”*).¹⁰ Then—after the first (1st) 'cleansing'—Najam instructed them to use a second (2nd) check (*Ex. T—“FOR Balance of Ken Jowdy's investment”*)—specifying, “*As soon as Ken's check has cleared, please deposit the Baja Management, LLC check in the Diamante del Mar, LLC account.*” (*Ex. V at ¶2*). The issues—in totality, *supra*—hi-light the gross-double-standard afforded people who even the FBI are scared of, *supra*.

If any other person had confessed to—or personally documented—any one of the diversions and embezzlements, *supra*, they would have been indicted immediately and arrested—but *not Jowdy (or his complicit partners)*. If any individual had used 'threats of violence' (a.k.a. racketeering) to protect its criminal enterprise (*supra*)—they would have been thoroughly investigated and indicted with the volume of indisputable inculpatory evidence and Jowdy's own confessions (*Ex. F--supra*).

Yet—the ignorance of incontrovertible fact was more troubling after Kenner had already explained all of this to the FBI, the SEC, and the U.S. Attorneys office from the EDNY, 9-months earlier (June 2009)—prior to their recovery of the supporting documents which corroborated Kenner's statements.

Conclusion...

In the interest of justice—the DOJ needs to select an *uncompromised* individual or team of individuals to meet with Kenner and review the two (2) decades of criminal graft that has been covered-up, blamed on Kenner as a smokescreen, and subsequent tens of millions of government dollars wasted on an epic misdirection—simply protect those of '*privilege*' who operate '*above the law*'.

¹⁰ This is the 'only' deposit traceable to Jowdy for the overtly documented \$110,000 he claimed to contribute to any project—not just Diamante del Mar. Yet—in 2009—when Danske Bank approved the takeover of the Lehman Brothers loan—Jowdy, Danske (along with Bhatti's verifications) documented Jowdy's \$8.4 million equity contribution in the Diamante Cabo san Lucas deal—**and no one else** (*Ex. W at 2*)! It was another banking fraud left unchecked by the government that Kenner and his investors counted on the FBI to protect them from Jowdy's double-standard protectionism.

The Court has the authority to pause the current proceedings and order a special investigation. Kenner implores the Court to act—with compassion and do so. In the alternative—Kenner prays the Court acknowledges the morass of exculpatory evidence concluding Kenner was *more transparent* than any defendant in history—specifically while facing ‘concealment’ of ‘legal’ transactions that CTE-admitted investors simply cannot recall—up to 10 years after the actual and well-documented events.

Sincerely,

Phil Kenner, Pro Se litigant

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